UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,839	07/23/2001	David B. Kay	1546.007US1	3919

			EXAMINER
21186	7590	06/13/2005	GRAHAM, CLEMENT B

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ART UNIT	PAPER NUMBER
3628	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action *Before the Filing of an Appeal Brief*	Application No. 09/911,839	Applicant(s) KAY ET AL.	
	Examiner Clement B Graham	Art Unit 3628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED pril 29, 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires _3_ months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) a set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: *NONE*.
Claim(s) objected to: *1-16*.
Claim(s) rejected: *NONE*.
Claim(s) withdrawn from consideration: *NONE*.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
   <u>See continue sheet.</u>

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). <u>4/28/05</u>

13. ☐ Other: _____.

continuation does not place the Application in condition for allowance because in response Applicant's arguments that references fail to teach "parsing a content body into a plurality of concept nodes and flagging a content hole if the percentage of successful service interactions at a particular concept node is below a predefined threshold and determining a percentage of documents as a function of concept node and computing a content hole score for the first concept node as a function of at least one of the successful services interactions the percentage of queries and the percentage of documents and billing charging a customer as a function or charging a customer based on the difference between the percentage of successful in a typical information retrieval system and the percentage of SSI in the particular information retrieval system".

First these limitations are addressed in a combination of teachings an stated, Getchius discloses in his teachings parsing a content body into a plurality of concept nodes ("i. e, "sever nodes" see column 4 lines 38-65") including a first ("i. e, first node" see column 1 line 58-65" concept node (see column 1 line 58-65 and determining a percentage of successful ("i. e, corresponding data sets "See column 26 lines 5-15) and service interactions as a function of concept node See column 25 lines 55-65 and column 26 lines 5-15 and medium having instructions thereon, wherein the instructions when executed in a computer create a system for executing a computer assisted method fo detecting content holes (see column 1 line 58-65 and column 4 lines 38-65) comprising:

parsing a content body into a plurality of concept nodes see column 4 lines 38-65 and from the table of linked lists of super-category term established in the step the banner ad retrieval software may at a step rank the super-categories. In particular, the system at the step 81 may rank the documents, i.e. the super-categories, according to the appearance of the words occurring in the user query and in the categories and the he ranking may be performed by a variety of techniques. One such technique obtains a number for each term that appears in the user query and in the categories that consists of the product of the term frequency for that term and the inverse document frequency for that term. The sum of all the resulting numbers may be calculated for all super-categories, and the super-category with the highest sum may be the highest ranked document. The banner ad that was assigned to that highest ranked super-category at the step of the flow chart 52 can then be displayed upon completion of the ranking step of the flow chart 132 see column 64 lines 30-56 and successful service interaction comprises a query from a user for which returned content matches ("i. e, resultant dataset") that user's intent (see column 1 lines 58-65 and   column 4 lines 38-65 and column 5 lines 1-2 and determining a percentage of successful service interactions ("i. e, corresponding datasets") in a typical information retrieval system. (See column 25 lines 55-65 and column 26 lines 5-15 and determining a percentage of successful service interactions ("i. e, corresponding data sets "See column 26 lines 5-15) for services provided in the defined information retrieval system See column 25 lines 55-65 and column 26 lines 5-15.

Wagstaff discloses the system typically involves determining whether the percentage of records in a data set having the key falls above o below a predefined threshold. (Note Fig. 7) and a particular key may be characterized according to the percentage of the records in a data set that have the key (the selectivity), and at a very low percentage, the value associated with that key is represented as an uncompressed row-ID list, and at some percentage indicated by reference, the value associated with the key is optimally represented as compressed row-ID list. In fact, for all percentages between threshold and the second threshold, the value is optimally represented as a compressed row-ID list. At percentages higher than, however, the optimal representation is a bitmap and determining how to represent the value of the hybrid index entry comprises determining whether the selectivity of the key of the record that is being inserted, deleted, or updated is above a predefined threshold, wherein when the key is found to be above the predefined threshold, the value of the hybrid index entry is represented as a bitmap and determining how to represent the value of the hybrid index entry comprises determining whether the selectivity of the key of the record that is being inserted, deleted, or updated is below a predefined threshold, wherein when it is found that the key is below the predefined threshold, the value of the hybrid index entry is represented as a list of row-IDs. see column 12 lines 45-60 and column 5 line 10 and column 13-14 lines 5-65.

Papierniak discloses a method of collecting subscriber specified information or supporting retrieval information to analyzing Internet and/o electronic commerce data over or from the World Wide Web for service providers, wherein the business data includes at least one of pre paid subscriber data, how the subscriber purchases services and products, subscriber discounts, billing rates, subscriber free subscriptions, and information. (see column 24 lines 35-40) and the data received via the questionnaire or on-line forms is then parsed, manually or automatically, into environmental characterization/related data described above, and business related data. Examples of business related data include, e.g., pre-paid user, how user purchases services and products, discounts, billing rates, free subscriptions, free areas/information on web page. see column 21 lines 30-35.

It is obviously clear the combinations of teachings discloses a system for parsing a content body into a plurality of concept nodes and flagging a content hole if the percentage of successful service interactions at a particular concept node is below a predefined threshold and determining a percentage of documents as a function of concept node and computing a content hole score for the first concept node as a function of at least one of the successful services interactions the percentage of queries and the percentage of documents and billin charging a customer as a function or charging a customer based on the difference between the percentage of successful in a typical information retrieval system and the percentage of SSI in the particular information retrieval system.

7.   Applicant also maintains that Wagstaff and Getchius cannot be combined, the Examiner recognizes that obviousness can only b established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary sk in the art. See In re Fine, 837 F.2d 1071,5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In re Fine, 837 F.2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also In re Eli Lilli & Co., 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); In re Nilssen, 851 F.2d 1401, 7USPQ2d 1500 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); Ex parte Clapp, 227 USPQ 972 (Bd. Pat. App & Inter); and Es parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

Also in reference to Ex parte Levengood, 28 USPQ2d, 1301, the court stated that "Obviousness is a legal conclusion, the determination o which is a question of patent law.

Motivation for combining the teachings of the various references need not to explicitly found in the reference themselves, In re Keller, 642 F.2d 413, 208USPQ 871 (CCPA 1981). Indeed, the Examiner may provide an explanation based on logic and sound scientific reasoning that will support a holding of obviousness. In re Soli, 317 F.2d 941 137 USPQ 797 (CCPA 1963)."

8.   With respect to Applicant's argument that no prima facie case of obvious exists, Examiner respectfully submits that obviousness is

not determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977F. 2d 1443, 1445,24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783F.2d 1038, 1039, 228 USPQ* 685, 686 (Fed. Cir.1992); In re Piaseckii, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir.1984); In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention (See paper number 10). Note, for example, in the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specially support that particular motivation and /or an explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness. As such, it is not seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one of ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner, Ex pane Levengood, 28 USPQ2d 1300(Bd. Pat. App &.,4/293 Therefore the combination of reference is proper and the rejection is maintained.